

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24124
Docket Number MW-24205

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
 { Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of **Trackman J. T. Luckey** for alleged violation of Rule No. '18' was arbitrary and in violation of the **Agreement** (System File C-4(13)-JTL/12-39(80-18) H).

(2) The **claimant** shall be reinstated with seniority and 011 other rights unimpaired, his record be cleared of the charge leveled against him and he **shall** be **compensated** for **all wage** loss suffered."

OPINION OF BOARD: **Claimant**, while off duty and off Carrier's property, allegedly fatally wounded a man on February 17, 1979. **Claimant** continued to protect his assignment, however, until November 9, 1979. On this date he obtained permission from the Carrier to be absent from his assignment to appear in court. Subsequently **Claimant** pled guilty to the charge of voluntary manslaughter on November 14, 1979 and he was sentenced in the Superior Court of the County of Mecklenberg, North Carolina to six to ten years in prison with eligibility for parole in four years. The presiding judge recommended that **Claimant** be put on work release and that part of his earnings while on work release and/or parole be sent to the mother of the man **Claimant** killed to reimburse her (in the amount of \$1,203.00) for funeral expenses. A stipulation of **Claimant's** plea of voluntary manslaughter was that he serve a mandatory minimum sentence of four (4) months in prison.

On November 26, 1979 Carrier bulletined the **Claimant's** position on Section Force 5706 as a permanent position vacancy and on November 27, 1979 Carrier notified **Claimant** to attend a formal hearing on December 6, 1979 for the alleged contravention of Rule 18 of the Seaboard Coast Line Railroad Company's Safety Rules for Engineering and Maintenance of Way Employees. Rule 18 reads:

"Disloyalty, dishonesty, desertion, intemperance, immorality, vicious or uncivil conduct, insubordination, sleeping on duty, incompetence, making false statements, or concealing facts concerning matters under investigation, will subject the offender to' dismissal."

An investigation was held on December 6, 1979 and the **Claimant** was absent although neither **Claimant** nor his representative requested a postponement prior to that date. On December 14, 1979 **Claimant** was informed by the Carrier that he had been found guilty as charged and that he was being dismissed from service.

A complete review of the facts of this case leads the Board to conclude that there is sufficient substantial evidence present to warrant the conclusion that Claimant was in violation of Rule 18 of Carrier's Safety **Rules**. As a procedural point, Organization **argues** that **Claimant** did not **receive** a fair **hearing** on December 6, 1979 because he **was** not present at the hearing. Aside from the facts, **important** enough in themselves in the mind **of** the Board, that neither Claimant nor Organization requested a postponement prior to the actual **time** of the hearing itself, nor **was** Claimant's representative able to give an alternative date **for** a **hearing** since it was not really clear how long Claimant was to remain in prison (**only** the **minimal amount** of time **was known**), the Board finds nothing improper per se, in a **case** of this type, in holding a hearing in absentia. The **contravention** of Carrier's Rule 1.8 was based on the fact of Claimant's conviction of a **penal** law, which had already occurred and which was on record, which the Claimant's personal presence at the hearing would not have changed one way or the other.

The Organization's contention that Claimant's position be ruled as a temporary vacancy rather than a **permanent** vacancy is **also** found to be without **merit** by the Board in this case. Rule 8, Section 1 of the Agreement between the parties makes **it clear** that positions vacated for **more** than thirty (30) days can be designated as permanent vacancies: and at the very least, from the record presented to this Board, Claimant was required to be absent from his position for a **minimum** of four (4) months.

FINDINGS: **The Third** Division of the **Adjustment** Board, upon the whole record and **all the** evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employees within** the meaning of the Railway **Labor** Act, as approved June 21, 1934;

That this Division **of** the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third **Division**

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of January 1983.